

STATE OF MICHIGAN
IN THE SUPREME COURT

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

vs.

JOHN V. JONES,
Defendant-Appellant.

MSC No. 139833
COA No. 284670
Circuit No. 96-004431-02

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DEFENDANT-APPELLANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF HIS
APPLICATION FOR LEAVE TO APPEAL, AS REQUESTED BY THIS COURT'S
ORDER OF APRIL 30, 2010

PROOF OF SERVICE

FILED

JAN 18 2011

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

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I. THE AMOUNT OF CREDIT MR. JONES SHOULD RECEIVE TOWARDS HIS CONVICTION IN THE INSTANT CASE SHOULD NOT DEPEND ON WHEN HE WAS SENTENCED ON HIS FEDERAL CASE, NOR ON WHETHER HE HAS RECEIVED OR MIGHT RECEIVE CREDIT FOR THE SAME PERIOD OF INCARCERATION TOWARDS HIS FEDERAL SENTENCE FROM THE FEDERAL COURT.

This Court's Order of April 30, 2010 asked the parties to address

...[I]n light of the concurrent nature of the federal and state sentences, why the amount of credit the defendant receives in this case should or should not depend on (1) whether the defendant has been sentenced for the federal offense; and (2) whether the defendant has received or might receive credit toward his federal sentence from the federal courts.

Mr. Jones contends he is entitled to credit against his state sentence in this case for all the time he has served in custody since he was arrested on May 12, 2006 on the capias warrant previously issued in this case; at a minimum, he is entitled to credit for all the time he has served since he was arraigned on the bench warrant in this case on May 2, 2007, at which time his bond was canceled and he was ordered remanded without bond in this case.

Mr. Jones agrees with the facts recited in the prosecution's Supplemental Brief that he was sentenced by the Federal Court on October 29, 2008 to a prison term of 108 months. Mr. Jones also agrees that the Federal Court's Judgment ordered that Mr. Jones' federal sentence be served concurrently with his state sentence in the instant case. Mr. Jones also agrees that an accurate copy of his Federal Court Judgment of Sentence is attached to the prosecution's supplemental brief as Appendix A.

Presumably, the Federal Court was aware that Mr. Jones will first serve his federal sentence of 108 months in federal correctional facilities, and he will then be turned over to the State of Michigan to complete his state sentence in the instant case. It therefore appears that the Federal Court determined that a sentence of 108 months might well be sufficient punishment for both the federal and state cases, and that Mr. Jones should be considered for release at the conclusion of his

108 month federal sentence. Therefore, the Federal Court ordered that the federal sentence (108 months) be served concurrently with the sentence in the instant case (90 months to 360 months). Thus, the Federal Court has imposed a sentence which, if properly implemented, will allow Mr. Jones to be immediately eligible to be considered for release on parole by the Michigan Parole Board once he has finished serving his federal sentence and has been turned over to state authorities.

Unless the Circuit Court's decision in this case is reinstated, the intent of the Federal Court will be thwarted. Mr. Jones will have to serve substantial additional prison time in the Michigan Department of Corrections (MDOC) after having finished serving his 108 month federal prison term, before he will become eligible to even be considered for release on parole.

This case can easily be resolved with reference to this Court's prior decisions regarding concurrent versus consecutive sentencing. This Court has recognized the "principle of law disfavoring accumulations of sentences." People v Smith, 438 Mich 715, 718; 475 NW2d 333(1991), quoting People v Loney, 12 Mich App 288, 292; 162 NW2d 832 (1968). This principle was followed in the two cases which this Court specifically asked the parties to address, and which Mr. Jones contends are the controlling authorities in this case: People v Gallagher, 410 Mich 429 (1979) and In Re Carey, 372 Mich 378 (1964).

The Court of Appeals decision in this case agrees that Mr. Jones should get credit towards his state sentence for time served on his federal sentence after that sentence was imposed. (COA No. 284670, 8/25/09, Slip Opinion at 2-3). However, that opinion says that Mr. Jones should not receive credit for time spent incarcerated in federal custody from the date of his arrest on the bench warrant in this case on May 12, 2006, until he was sentenced by the Federal Court on October 29, 2008, a period of approximately two years and six months. *Id.* The Court of Appeals reaches this result primarily by applying federal statutes and case law which are not applicable to the state law

issue presented herein. Id. The Court of Appeals opinion also refers to prior opinions of that court which address issues of sentencing credit for defendant who are serving sentences which state law says must run consecutively. Id.

Further, The Court of Appeals opinion seems to suggest that it would be inappropriate for the Federal Court to provide credit for the time Mr. Jones was incarcerated prior to his federal court sentencing. However, this is an issue of federal law which the Federal Courts will have to interpret and apply. The Court of Appeals erred in determining that the date the federal sentence was imposed on Mr. Jones by the federal court makes a difference in the decision of this case.

This case should be decided based upon Gallagher and Carey, supra, which provide a clear and easy-to-apply rule of law:

The rule in Michigan is that a sentence may not be imposed to commence at the completion of another sentence in the absence of statutory authority. In re Carey, 372 Mich 378; 126 NW2d 727 (1964). In that case, the defendant had been sentenced to 5 years imprisonment for a Federal offense four days before he was sentenced to serve 3 to 14 years on a state conviction. After noting that two state prison terms would run concurrently, it was held that the defendant should receive credit for the time served in Federal prison:

“A defendant who is sentenced in a State court after receiving sentence in a Federal court is subject to the same ‘undefined and uncertain contingencies’ about when State sentence begins, as he is in the case of 2 or more State sentences. The reason for the rule aptly applies in both types of cases. Therefore, we hold that where a defendant has been sentenced in Federal court, and is subsequently sentenced in a State court or courts, sentence may not be imposed to commence at the completion or expiration of Federal sentence, in the absence of statutory authority.”

In re Carey, supra, 381.

The people contend that Carey is distinguishable because the sentencing for the Federal offense occurred before the state sentencing. *Here, the defendant was sentenced on the Federal offense after the state sentencing.*

We do not find these differences in the order of sentencing to be controlling *when the actual imprisonment on the Federal conviction began before imprisonment on the state conviction.* In such a case, a defendant is subject to the same uncertain contingencies about when the state sentence will begin. The defendant is entitled to

credit for time served on the Federal conviction. Pursuant to GCR 1963, 865.1(7), the defendant's sentence is amended to grant him credit for the time served in Federal prison.

Gallagher, supra, at 439-440 (emphasis added).

The Court of Appeals noted that the only factual distinction between the instant case and Gallagher is that Mr. Jones had not yet been sentenced in the federal court at the time the Circuit Court properly ruled that he was entitled for credit for time served since he was arrested on the bench warrant in this case. (COA No. 284670, 8/25/09, Slip Opinion at 2). But this is a distinction without a difference. The Court of Appeals fails to identify any policy reason why this minor factual distinction should matter.

The prosecution brief suggests that the Circuit Court's decision will result in some sort of impermissible "multiple credit" or "double-counting." (Prosecution Supplemental Brief at 5). But "double-counting" is inherent in a system, such as Michigan's, which has a preference for concurrent sentencing. That is exactly what concurrent sentencing is: it is "multiple credit" or "double-counting." Even if the federal authorities grant Mr. Jones credit for the time he served between his arrest on the Michigan bench warrant and the date of his Federal sentencing, this State's clearly expressed preference for concurrent sentences requires that he be given credit for the same period of time. Whether Mr. Jones is credited on his federal sentence for the two and one half years between his arrest on the state bench warrant and his federal sentence is irrelevant to the state law issue which is before this Court in this case.

This Court has repeatedly stated that in Michigan there is a policy preference for concurrent sentencing. Gallagher and Carey, supra. In other words, concurrent sentences are imposed by default absent either a statute which requires consecutive sentencing, or a statute which gives a trial judge discretionary authority to impose a consecutive sentence and the sentencing judge in fact

exercises that discretion to impose a consecutive sentence. In the circumstances of this case, state law does not permit consecutive sentences; therefore, Mr. Jones is entitled to credit for all time he has served related to his conviction and sentence in the instant case. Ever since the federal authorities arrested him on the outstanding bench warrant in this case, his incarceration has been related to this case. Therefore, he is entitled to credit on his state sentence for the time he has served since his arrest.

Presumably, the federal court wanted Mr. Jones to be credited for that time as to both the federal sentence and the sentence in the instant case: hence the federal Judgment that the sentences be served concurrently. But it is irrelevant for the decision in this case whether Mr. Jones receives credit for that two and one half year period from the federal authorities. Here, the rule of law set forth in Carey and Gallagher, supra, requires that Mr. Jones receive credit for the time he has been incarcerated since his arrest on the outstanding bench warrant.

The decision of the Circuit Court was required by the prior precedents of this Court, Carey and Gallagher, supra, and is perfectly consistent with the sentencing decision of the Federal Court in Mr. Jones' federal case. Therefore, the Court of Appeals Opinion should be vacated, and the Circuit Court decision should be reinstated.

RELIEF REQUESTED.

WHEREFORE, for all the above reasons, Defendant-Appellant John Jones requests that this Court vacate the opinion of the Court of Appeals, and reinstate the Order of the Wayne Circuit Court that Mr. Jones is to receive credit towards his sentence in the instant case for all the time he has served in custody since his arrest on the outstanding Capias Warrant on May 12, 2006, until the date on which he is turned over to the Michigan Department of Corrections to serve his sentence in the instant case.

Respectfully submitted,



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Dated: January 14, 2011